

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KHETAM NIMER, an individual,
and MONA HAMED, an individual,

Plaintiffs,

Case No. 14-13689

v.

HON. GEORGE CARAM STEEH

ADAM TOURS OF NEW YORK, INC.,
a corporation,

Defendant.

_____ /

ORDER GRANTING PLAINTIFFS' MOTION
FOR RELIEF FROM JUDGMENT (ECF NO. 36)

The court dismissed this case on January 9, 2020, for failure to prosecute and entered judgment the same day. ECF No. 34, 35. Plaintiffs seek to set aside the court's order and judgment.

On November 26, 2019, the court ordered Plaintiffs to file a certificate of service and a motion for default judgment, or risk dismissal, by December 16, 2019. When Plaintiffs failed to file the certificate of service and motion for default, the court dismissed the case.

Plaintiffs' counsel requests that the court set aside the judgment, pursuant to Federal Rule of Civil Procedure 60(b)(1). Counsel asserts that

his failure to file the required papers was caused by excusable neglect, because his mother passed away on December 12, 2019.

Under Rule 60(b)(1), a party may obtain relief from judgment based upon “mistake, inadvertence, surprise, or excusable neglect.” With respect to excusable neglect, “the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission. These include . . . the danger of prejudice to the [nonmoving party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993). The Sixth Circuit has recognized that “the *Pioneer* factors ‘do not carry equal weight; the excuse given for the late filing must have the greatest import. While [the others] might have more relevance in a closer case, the reason-for-delay factor will always be critical to the inquiry.’” *United States v. Munoz*, 605 F.3d 359, 372 (6th Cir. 2010) (citation omitted).

Plaintiffs were to file their certificate of service and motion for default judgment by December 16, 2019. Plaintiffs’ counsel admittedly lost track of his responsibilities after the death of his mother on December 12, 2019.

Under the circumstances, the court finds that the reason for the delay weighs in favor of a finding of excusable neglect. Additionally, the court finds neither bad faith on the part of Plaintiffs nor prejudice to the non-movant.

Accordingly, IT IS HEREBY ORDERED that Plaintiffs' motion for relief from judgment (ECF No. 36) is GRANTED and the judgment is VACATED. Plaintiffs shall have until **May 22, 2020**, to file their certificate of service and motion for default judgment. If the required papers or motion for extension of time are not filed by that date, the court will dismiss this action without further notice or hearing.

SO ORDERED.

Dated: May 6, 2020

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on May 6, 2020, by electronic and/or ordinary mail.

s/Brianna Sauve
Deputy Clerk